

DOCUMENT RESUME

08156 - [C3488611]

[Untimely Protest against Award to Nonprofit Institution].
A-192854. December 14, 1978. 2 pp.

Decision re: Kirschner Associates, Inc.; by Milton J. Socolar,
General Counsel.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Department of Health, Education, and
Welfare.

Authority: 4 C.F.R. 20. B-190490 (1978).

A company protested award of a contract to any
nonprofit institution, alleging that an unfair pricing situation
existed. The protest was filed more than 10 days after the basis
for protest was known and was untimely. Allegations concerning
indirect costs for nonprofit institutions involved contract
administration and are not for consideration by GAO. (RBS)

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

P. F. Sullivan
P. 11

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FILE: B-192854

DATE: December 14, 1978

MATTER OF: Kirschner Associates, Inc.

DIGEST:

1. Protest filed more than 10 days after basis for protest is known is untimely and not for consideration on merits.
2. Protester's request that awardee's compliance with indirect cost limitation on instant contract be enforced through the monitoring of the awardee's Federal contracts concerns contract administration and is not for consideration by GAO under bid protest function.

Kirschner Associates, Inc. (Kirschner) protests the award of a contract to any non-profit institution under request for proposals (RFP) 7-78-1001 by the Department of Health, Education and Welfare (HEW). The RFP concerns training and technical assistance for grantees under the Headstart Program.

For this type of contract it is HEW's policy to limit allowable indirect costs for non-profit organizations to 8 percent of direct costs. No such limitation, however, is applied to profit-making institutions. Kirschner, a profit-making organization, indicates that frequently a non-profit offeror will "transfer the financial loss incurred (by accepting a contract at an indirect cost rate below its existing rate) to other Federal contracts." Kirschner contends that a contract award in this situation leads to an unfair pricing situation because proposals submitted on this basis do not represent a nonprofit organization's actual indirect costs.

We believe that Kirschner's protest is untimely and not for consideration on the merits.

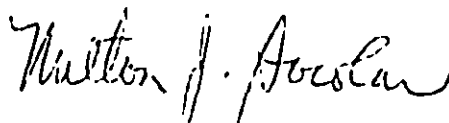
By letter of March 21, 1978, which contained the minutes of a preproposal conference, Kirschner was advised that the 8 percent indirect cost limitation would apply. After a successful protest on a different

basis to the agency against an award to Community Development Institute (CDI) under the same RFP, HEW terminated CDI's contract, and on August 4 issued an amendment which modified the RFP and extended the closing date for receipt of proposals to September 1, 1978. We have been advised by HEW that award has been made to CDI.

Section 20 2(b)(2) of our Bid Protest Procedures requires that bid protests be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2) (1978). Essentially, Kirschner's protest concerns the propriety of the 8 percent indirect cost limitation, and the undue competitive cost advantage which may be enjoyed by nonprofit organizations to which such cost limitation applies. This basis for protest was apparent to Kirschner at the latest upon its receipt of the conference minutes in March. Moreover, Kirschner was informed by letter of July 28 that its protest had been sustained, that the contract awarded to CDI would be terminated and that the RFP would be reissued on August 4. Upon Kirschner's receipt of the August 4 RFP, it should have been apparent to Kirschner that the 8 percent limitation would be applicable to the procurement. Therefore, it would appear that Kirschner's protest received in our Office September 11 is untimely.

Kirschner submitted this protest to "insure" that a nonprofit organization would not transfer its losses on this contract to other Federal sources. To the extent Kirschner's protest requests that compliance with the 8 percent indirect cost limitation on the instant contract be enforced through the monitoring of the awardee's Federal contracts, it is not cognizable under our Bid Protest Procedures. Rather this involves contract administration which is the function of procuring agencies and not this Office. See Wickham Contracting Co., Inc., B-190490, March 24, 1978, 78-1 CPD 232.

The protest, therefore, is dismissed.



Milton J. Socolar
General Counsel